

ENTERED

July 05, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL ACTION NO. 2:13-CR-764-7
	§	
RICARDO ROBERTO OLIVAS; aka	§	
BUGS	§	

ORDER

Pending before the Court is Defendant/Movant Ricardo Olivas' "Motion to Have the Gun Enhancement Removed from My Case Record" (D.E. 279).

In 2013, Movant pled guilty to conspiracy to possess with intent to distribute more than five kilograms of cocaine. According to his Presentence Investigation Report (D.E. 232), Movant was arrested after 16.4 kilograms of cocaine were found hidden in the spare tire beneath his truck. PSR ¶ 25. At the time of his arrest, a Glock 9mm pistol and loaded magazine were also found in Movant's truck. *Id.* Because he possessed a firearm in connection with the offense, his offense level was increased by two levels under U.S.S.G. § 2D1.1(b)(1). PSR ¶ 52. The Court adopted the PSR at sentencing.

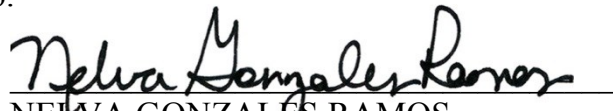
Movant now moves to have the gun enhancement removed in order that he may enroll in a Residential Drug Abuse Program (RDAP) and be considered for early release.

The Violent Crime Control and Law Enforcement Act of 1994 provides that federal prisoners convicted of nonviolent offenses who remain in custody after completing treatment in an RDAP may receive a reduction in their sentences of up to one year. 18 U.S.C. § 3621(e)(2)(B). Section 3621 does not define "nonviolent offense";

instead, Congress allowed criteria to be established by the Bureau of Prisons. H.R. Rep. 103–320, 103rd Cong., 1st Sess. (1993). Under current BOP regulations, “Inmates whose current offense is a felony . . . that involved the carrying, possession, or use of a firearm . . .” are not eligible for early release. 28 C.F.R. § 550.58(vi)(B).

Movant does not challenge the BOP criteria, nor does he cite any authority allowing the Court to adjust its sentencing determinations at this time. In fact, Movant does not even dispute that he possessed a firearm in connection with his drug trafficking offense. Accordingly, Movant’s “Motion to Have the Gun Enhancement Removed from My Case Record” (D.E. 279) is **DENIED**.

ORDERED this 5th day of July, 2016.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE